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APPLICATION NO. 08/310,115	FILING DATE 08/13/97	FIRST NAMED INVENTOR BAYCHAR	ATTORNEY DOCKET NO. BAY-310
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EXAMINER

JUSKA, C

ART UNIT

PAPER NUMBER

1771

15

DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.
08/910,115

Applicant(s)

Baychar

Examiner

Cheryl Juska

Group Art Unit
1771



☒ Responsive to communication(s) filed on Nov 21, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-24 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-24 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on November 21, 2000, for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/910,115 is acceptable and a CPA has been established. An action on the CPA follows.
2. Since Applicant has failed to file a response and/or an amendment to the last Office Action (Paper No. 12 filed on May 24, 2000), the following action is a substantial repeat of said last Office Action.

Response to Amendment

3. Amendment C, submitted as Paper No. 11 on February 29, 2000, has been entered. The specification has been amended as requested. Claims 1, 5, 6, 8, 9, 11, 12, 17, and 20 have been amended. The pending claims are 1-24.
4. Applicant's traversal of the objection to the oath/declaration, as set forth in section 2 of the last Office Action, has been found persuasive. Thus, said objection is hereby withdrawn. Amendment C is sufficient to withdraw the objection to the specification, as set forth in section 3(a) of the last Office Action. Additionally, Amendment C is sufficient to withdraw the double patenting rejection, set forth in section 4 of the last Office Action. The claim objections, set forth in section 5 of the last Office Action, and the 35 USC 101 rejections, set forth in section 7 of the

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last Office Action, are hereby withdrawn due to Amendment C. The 112, 1st rejection set forth in section 9 of the last Office Action, is hereby withdrawn due to Applicant's persuasive arguments. The 112, 2nd rejections of claims 1 and 8, as set forth in section 12 of the last Office Action, are also hereby withdrawn due to Amendment C. Furthermore, the prior art rejections set forth in sections 15 and 16 of the last Office Action, are hereby withdrawn due to Amendment C, which adds a limitation of a nonwoven layer to independent claim 8.

Specification

5. The use of the trademarks have been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology. Said rejection is maintained from the last Office Action, section 3(b). Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 14, 15, and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 14, 15, 18, and 19 depend ultimately from independent claim 8, which now includes a limitation to a nonwoven layer. Thus, it is unclear if the nonwoven recited in claims 14, 15, 18, and 19 is in addition to, or the same, as the nonwoven of claim 8.

9. Similarly, claim 17, which depends from claim 16, is indefinite because it is unclear if the claimed nonwoven is in addition to, or the same, as that recited in claim 16.

10. Claim 20 is indefinite for the use of the phrase "selected from a group of outer moisture transfer materials" (lines 5-6 of said claim) without setting forth said group. Said rejection is maintained from the last Office Action, section 12.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4, 8-10, and 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,338,366 issued to Evans et al.

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Independent claim 1 is drawn to a multilayered fabric comprised of a first layer of a first moisture transfer material, a second layer of a foam material, a third layer of a breathable membrane, and a fourth layer of a second outer moisture transfer material. Independent claim 8 is drawn to a multilayered fabric comprised of a first layer of a first moisture transfer material, a second layer of a foam material attached to a nonwoven material, and a third layer of a second outer moisture transfer material.

Evans discloses a multilayered fabric for use as a wiping implement comprised of an absorbent core sandwiched between two wicking layers (abstract). Suitable materials for the absorbent core include foams (col. 4, lines 27-30). The outer wicking layers are comprised of cloth-like webs which promote rapid transport of drops of liquid (col. 4, lines 37-40 and col. 5, lines 18-25). Additionally, Evans teaches intermediate layers may be present between the absorbent core and the outer wicking layers. Specifically, Figure 5 shows an intermediate layer of a meltblown nonwoven material attached to a foam absorbent core (col. 10, line 58-col. 11, line 5).

Thus, it can be seen that the invention of Evans anticipates Applicant's claim 8. Additionally, it is asserted that the Evans disclosure anticipates claim 1, in that the meltblown nonwoven material of Evans can be broadly interpreted as a "breathable membrane."

With regard to Applicant's recitation that the inventive multilayered fabric is an "apparel to be worn by an individual," it is noted that said recitation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any

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patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With regard to claims 2-4, 9, and 10, it is argued that said claims contain process limitations within an article claim. As such, and in the absence of a showing of the criticality of said process limitations to the claimed article, said limitations are hereby not given patentable weight. In other words, the method of attaching the layers of fabric to each other (i.e., lamination or mechanical bonding) is irrelevant to the structure of the article as claimed.

With regard to claims 14-19, which basically all limit the foam (an elastomeric layer) to being attached to a nonwoven layer, it is asserted that the cited Evans patent clearly teaches this embodiment. Therefore, claims 1-4, 8-10, and 14-19 are rejected by the cited Evans patent.

13. Claims 1-4, 6, 8-10, 12, and 14-19 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,338,371 issued to Dawn et al.

Claims 1-4, 8-10, and 14-19 have been previously described. Claims 6 and 12 limit the outer moisture layers to be coated by a waterproof film.

Dawn discloses an absorbent product comprised of (a) a facing layer (12), which is water pervious, (b) a wicking layer (14), which transports moisture away from the facing layer to an absorbent core, (c) a foam layer (32 and 34) and a highly water permeable nonwoven layer (22) as

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part of an absorbent core, (d) a second water pervious layer (24) which may be of the same material as (14), and (e) a water impervious backing layer (30), which may be a woven fabric coated with a film (col. 3, lines 15-40; col. 3, line 66-col. 4, line 5; col. 5, lines 1-13; col. 5, lines 21-22; and Figures 1 and 2).

The same arguments presented above with regard to the preamble recitation, methods limitations of claims 2-4, 9, and 10, and the nonwovens of claims 14-19, are applicable here. Thus, it can be seen that the cited Dawn patent anticipates Applicant's claims 1-4, 6, 8-10, 12, and 14-19.

14. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,637,389 issued to Colvin et al.

Claim 20 is drawn to a two-layer structure comprising a first layer of a moisture transfer material and a second layer of a moisture transfer layer which has been treated with encapsulation.

Colvin discloses a microencapsulated foam material (abstract). In one embodiment, a two-layer structure is formed, wherein only one layer is encapsulated (Figure 4 and col. 5, lines 63-65). Additionally, Colvin teaches that the foam material may be hydrophilic, wherein moisture is absorbed and released (col. 7, lines 30-37). Hence, it can be seen that the cited Colvin patent anticipates Applicant's claim 20.

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Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Dawn patent in view of US Patent 5,269,862 issued to Nakajima et al.

Said claims limit the outer layer to be a fabric structurally knitted or woven to repel water. Although Dawn is silent with regard to said limitation, said fabrics are well-known in the art, as is evidenced by the cited Nakajima patent (abstract; col. 2, lines 5-9 and 18-22). Thus, it would have been obvious to one skilled in the art to substitute a waterproof coated fabric, as is taught by Dawn, with a fabric specifically constructed to be waterproof, as is disclosed by Nakajima. Motivation to do so would be the inherent advantages of the Nakajima fabric, such as high fashionability, high air permeability, and waterproofness. Therefore, claims 7 and 13 are rejected as being obvious over the cited patents.

17. Claims 5, 11, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Evans and/or Dawn patents in view of the cited Colvin patent.

Said claims limit a layer to be treated with microencapsulation. Although the cited Evans and Dawn patents do not teach of a microencapsulation treatment, said treatment is well-known in the art. For example, Colvin teaches the treatment of a substrate with microencapsulation

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renders said substrate to act as a thermal insulator. Thus, it would have been obvious to one skilled in the art to treat a layer of the inventions of Evans or Dawn with microencapsulation in order to render said layer as a thermal insulator. Upon said treatment, the inventions of Evans and Dawn could be expanded to other applications, such as a wiping implement for extreme temperature surfaces. Therefore, said claims are rejected as being obvious over the cited art.

Conclusion

18. All claims are drawn to the same invention claimed in the parent application prior to the filing of this Continued Prosecution Application under 37 CFR 1.53(d) and could have been finally rejected on the grounds and art of record in the next Office action. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing under 37 CFR 1.53(d). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the

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statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is (703) 305-4472. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (703) 308-2414. The official fax number for this TC 1700 is (703) 872-9310 and, for After Final communications, (703) 872-9311.



CHERYL JUSKA
PATENT EXAMINER

cj

January 16, 2001